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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 B&O MANUFACTURING, INC.,
17 Plaintiff,
18 v.
19 HOME DEPOT U.S.A., INC.,
20 Defendant.

CASE NO. C07 02864 JSW

(Proposed)
**ORDER ON DEFENDANT HOME DEPOT
U.S.A., INC.'S MOTION TO DISMISS
COUNTS TWO AND THREE FOR
FAILURE TO STATE A CLAIM UPON
WHICH RELIEF MIGHT BE GRANTED**

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23 Defendant Home Depot U.S.A., Inc. having timely moved to dismiss Counts Two and
24 Three of Plaintiff B&O Manufacturing, Inc.'s First Amended Complaint, and this Court finding that
25 such dismissal is warranted as a matter of law,

26 IT IS HEREBY ORDERED THAT Defendant Home Depot U.S.A., Inc.'s Motion to
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ORDER ON DEFENDANT HOME DEPOT U.S.A., INC.'S MOTION TO DISMISS COUNTS TWO AND
THREE FOR FAILURE TO STATE A CLAIM UPON WHICH RELIEF MIGHT BE GRANTED

1 Dismiss Counts Two and Three is GRANTED, and Counts Two and Three of the First Amended
2 Complaint are DISMISSED WITH PREJUDICE. Pursuant to Federal Rule of Civil
3 Procedure 12(a)(4), Defendant shall answer the remaining allegations in the First Amended
4 Complaint within ten days of the date of this Order.

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6 Dated: _____

The Honorable Jeffrey S. White